

REMARKS

Claims 1, 3, 4, 7-11, 13-17, 20-22 and 26-29 are rejected.

Claims 2, 5-6, 18, 19, 21-22, and 23-25, have been canceled.

Claims 1, 17 and 30 have been amended to more clearly define applicants invention.

No new matter has been added

Rejections Under 35 U.S.C. §103(a)

a. Claims 1, 3, 7-11, 15 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Perkins et al. (U.S. Patent Application Publication No. 2002/0151058, of record) in view of Yu et al. (of record) and further in view of Prideaux et al. (U.S. Patent No. 6,472,183) for reasons of record. Applicants traverse.

The teachings of Perkins, Yu and Prideaux are of record.

To reiterate the reasons for rejection of record (office action mailed 5/25/06): The examiner finds that Perkins teaches all the elements of the claimed invention with the exception of constructs comprising recombination sites flanking the selectable marker or the lambda-red recombination system. Yu teaches the lambda-red recombination system but does not teach constructs comprising recombination sites flanking the selectable marker. Prideaux teaches the utility of flanking recombination sites for the excision of genetic elements. The examiner finds that the skilled person would find it obvious to modify the methods of Perkins in yeast with the system in *E. coli* as described by Yu to effect the recombination of the invention with the recombination sites as taught by Prideaux.

It is well settled that in order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” MPEP 2143.

Claim 1 as now amended includes the limitations of claims 5 and 6 and insist that the first chromosomal region is either upstream of a bacterial promoter or an inter-operon. This is an element that is not taught in any of the cited references. Additionally Claim 17 as amended now recites the limitation that promoter of the second recombination element is selected from the group consisting of phage *T5* promoter, a phage *T7* promoter, and a *lac* promoter. This is an element not taught in any of the cited references. As such, since the combination of the cited references do not teach all the elements of the invention the combination of these references does not support a *prima facie* case of obviousness under 35 USC § 103.

b. Claims 1, 3, 4, 7, 8, 11, 13-17, 20-22 and 26-29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Perkins et al. (of record) in view of Yu et al. (of record) and further in view of Welch et al. (U.S. Patent Application Publication No. 2002/0187544) as evidenced by Guzman et al. (J. Bacteriol., 177(14): 4121-4130 (1995)) for reasons of record. Applicants traverse.

The teaching of the cite art has been given previously.

To reiterate the reasons for rejection of record (office action mailed 5/25/06): The examiner finds that the Perkins teaches all the elements of the invention with the exception of the replacement of a native promoter with a foreign promoter, constructs comprising recombination sites flanking the selectable marker or the lambda-red recombination system. Yu teaches the use of the lambda-red recombination system but do not teach the use of recombination sites flanking the selectable marker for its excision. Welch and Guzman teach the use of the lambda-red recombination system for the replacement of a native promoter with a foreign one.

The standard for a *prima facie* case of obviousness is given above. As noted above one of the essential elements is that all the elements of the claimed invention must be found in the combined references. Applicants point the examiner to the amendments to claims 1 and 17 recited above and respectfully suggest that in view of these amendments all the claimed elements not found in the references as combined and therefore the combination of Perkins, Yu, Welch and Guzman do not support a *prima facie* case of obviousness under 35 USC § 103.

In view of the foregoing applicants submit the claims are in condition for allowance and respectfully request reconsideration of the claims as amended.

Should the Examiner wish to discuss any issues involved in this application, the Examiner is respectfully invited to contact the undersigned at the telephone exchange set forth below. Should there be any fee due in connection with the filing of this Amendment, please charge such fee to Deposit Account No. 04-1928 (E. I. du Pont de Nemours and Company).

Respectfully submitted,

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